

STATE OF NEW MEXICO  
COUNTY OF DONA ANA  
THIRD JUDICIAL DISTRICT COURT,

MARY GRAHAM as the Personal Representative  
of the Estate of Kenneth Graham, decedent,  
MARY GRAHAM, individually and in her  
personal capacity,

Plaintiffs,

vs,

CV No. \_\_\_\_\_  
Judge assigned: \_\_\_\_\_  
Jury Demanded \_\_\_\_\_

COUNTY OF DONA ANA,  
DONA ANA COUNTY SHERIFF'S OFFICE, and  
DASO DEPUTY SAMUEL RASHE, in both his  
personal and official capacities,

Defendants.

**CIVIL COMPLAINT FOR DAMAGES**

COMES NOW THE PLAINTIFF MARY GRAHAM, by and through her attorneys  
Jose R. Coronado and G. (gilbert) Greg Valdez, and for her causes of action against  
the Defendants and asserts as follows:

**JURISDICTIONAL ALLEGATIONS:**

1. Plaintiff in her capacity as Personal Representative of the Estate of Kenneth Graham files her claims against the three named defendants pursuant to the New Mexico Tort Claims Act; she also files her claims against Defendant DASO Deputy Samuel Rashe pursuant to 42 USC Sections 1983 and 1988.
2. Plaintiff in her individual and personal capacity files her claim for emotional distress against the three named defendants pursuant to New Mexico tort common law and the New Mexico Tort Claims Act Sections 41-4-1 et. seq. NMSA 1978.

**THE PARTIES TO THIS ACTION:**

3. The Plaintiff Mary Graham is the surviving spouse of the decedent Kenneth Graham and is the Personal Representative of the Estate of Kenneth Graham, decedent.

4. The Plaintiff Mary Graham also brings an action in her individual and personal capacity for a claim of emotion distress personal to her and not as a claim of the estate.

5. The decedent, Kenneth Graham, at all times material to the causes of action set forth in this complaint, and also at the time of his death resided at Frodo Place, Radium Springs, Dona Ana County, State of New Mexico together with his wife Mary Graham.

6. Defendant County of Dona Ana is a political subdivision organized under the laws of the State of New Mexico and is situated within the boundaries of the State of New Mexico.

7. Defendant Dona Ana County Sheriff's Office is a department of the County of Dona Ana and is a law enforcement agency.

8. Defendant DASO Deputy Samuel Rashe, at all times material, was an employee of the County of Dona Ana, serving as a deputy within the Dona Ana Sheriff's Office, and was acting in his official capacity under color of state law. To such extent Defendant DASO Deputy Samuel Rashe acted beyond the scope of his employment and acted in his personal capacity.

**GENERAL ALLEGATIONS:**

9. On May 16, 2011 Deputy Samuel Rashe was on duty as a Sheriff's Deputy and he was dispatched to Frodo Place, in Radium Springs, in the County of Dona Ana, in the State of New Mexico for a "welfare check" upon Kenneth Graham.
10. Kenneth Graham was born on June 26, 1930 in Roswell, New Mexico. On May 16, 2011 he resided with his wife Mary Graham in a mobile home on a lot located on Frodo Place, Radium Springs, in the County of Dona Ana, in the State of New Mexico.
11. The Graham mobile home is located upon a lot owned by Pat Matson (Kenneth Graham's stepson and Mary's natural son) who has a second mobile home also located on the lot. The two mobile homes are close to one another, probably less than 150 feet between the front doors.
12. Kenneth Graham was a big man. At his prime he stood over six feet tall and weighed in excess of 200 pounds. In 2008, Kenneth had an episode where he began to hemorrhage blood and had to go to the hospital. He was diagnosed with colon cancer. He underwent surgery and then came down with a MRSA Infection.
13. Kenneth Graham underwent chemotherapy and radiation treatments to no avail and he became emaciated. On May 16, 2011 he stood hunched over, had a weight of approximately 140 pounds, and could only walk with the use of a walker.
14. Kenneth Graham continued to use his regular clothing and his tee shirts draped over his shoulders and hung below his trouser waist line. His pants were oversized and only stayed up because he synched his belt tight. He appeared more frail than his emaciated body actually reflected.
15. In early 2011, Kenneth began obtaining services from Hospice. Hospice personnel assisted him with pain medications and counseling to cope with his

impending death. He took Oxycotin as well as several other medications, and he used a "walker" to ambulate more than ten steps.

16. On May 16, 2011, Kenneth was having a "bad day." He was irritable and snapping at Mary. He needed to take a particular medication but he was out of it; doses of the medication were supposed to be delivered that day by Fed Ex.

17. Mary Graham went to visit her doctor and left Kenneth Graham sleeping on the couch. Upon her return she found Kenneth with his mouth open, labored breathing and an ashen white or gray pallor. She and her son Patrick telephoned Hospice and a nurse went to the house.

18. The nurse checked Kenneth's oxygen level which was low, and put him on a tank of oxygen. Kenneth came around and conversed essentially in nonsensical language. The nurse left shortly before noon.

19. After the hospice nurse left, the Fed Ex truck driver arrived and delivered the medication. Mary took one of the pills and handed it to Kenneth. Kenneth threw the pill on the coffee table and pulled the oxygen tube from his nose. Mary asked him; "What do you just want to die?" Kenneth became angry, stood up and told Mary, "I should just rip off your head." Patrick stepped between his mother and Kenneth; he put his hands on Kenneth's shoulders to gently push him back down onto the couch. As he was doing so, Michael Robert entered the room in response to having heard Kenneth holler at his mother; he saw Patrick pushing Kenneth by the shoulders and grabbed Kenneth from his belt and pulled him away.

20. Mary Graham walked outside to the porch. She telephoned her daughter Sandy who lives in Roswell and who is a registered nurse. She explained the events of the day and Kenneth's behavior.

21. Sandy urged her mother to call 911 for assistance. Mary was initially averse, but Sandy explained that they would send a paramedic who would calm or sedate Kenneth and transport him to a hospital for his safety.

22. Mary Graham telephoned 911 and spoke with the dispatcher. She explained that her husband was terminally ill, that upon her return from the doctor's office she found Kenneth sitting on the couch ashen white and "out of it." She also explained that the Hospice Nurse had put Kenneth on Oxygen and after the nurse left that "he went plumb out of his mind, he tried to hit me, he took a swing at the boys, and had ripped his oxygen mask off." She explained that her daughter Sandy who is a registered nurse urged her to call 911 and ask that paramedics respond so that they could sedate Kenneth and take him to a hospital.

23. Dispatch interrupted Mary's conversation and dispatched a Sheriff's Unit, the Radium Springs Fire Department, the Dona Ana Fire Department and an Ambulance to the location.

24. More than 30 minutes after the initial call, a sheriff's unit and one of the fire department units arrived on scene. Both units passed the location, the Fire Department parked two blocks away; the sheriff's unit did a U-turn, returned and stopped on the street across from the gate leading into the property and the parking area in front of the two mobile homes.

25. Defendant Deputy Rashe got out of his vehicle and was immediately met in the street by Michael Robert Graham. Michael Robert asked the deputy "Why are you here, we called for paramedics?"

26. Michael Robert then began to explain that Kenneth Graham was terminally ill, that he was having a bit of an episode, and that his sister Sandy who is a registered nurse told them to call for paramedics. He informed the deputy that "you are only going to upset him and make him worse."

27. As Michael Robert was talking with the deputy, a woman walked out of the house where the unit had parked and called to the Deputy. She also tried to tell him that Kenneth was terminally ill. Deputy Rashe, turned towards her and told her to leave. She hesitated. Deputy Rashe again spoke to her and stated; "Get your fat ass out of here or I will arrest you."

28. Deputy Rashe then directed his attention to Michael Robert and said; "Look, all I need to know, is if I am walking into a domestic situation?" Michael Robert responded "No."

29. As the Deputy and Michael Robert entered the property, Mary Graham approached to talk with the deputy. She also attempted to inform him that Kenneth Graham was terminally ill and was having an episode. The deputy asked her, did he hit you. Mary responded "No, he did not hit me." She told the Deputy; "He is just upset, can you give him a hypo to settle him down." The deputy responded, "I don't have a hypo, I have a gun and a Taser."

30. The Deputy then ordered Mary Graham and Michael Robert to sit down on a bench that was out in the yard. As this occurred, the front door opened and Kenneth Graham called for Mary to come in.

31. Because there was no response by Mary, Kenneth Graham then stepped out of the door way and onto the porch. Deputy Rashe turned and walked towards Kenneth. Kenneth then noticed Deputy Rashe and said, what are you doing here, you have no right to be on my property, get out of here or I will beat you. As he hollered at the deputy, he used his left hand to balance himself against the screened in portion of the porch and shook his finger on his right hand at the deputy.

32. The deputy drew his Taser and pointed it at Kenneth. Michael Robert ran towards the deputy and screamed, "You are not going to Tase my dad." The Deputy then discharged the Taser.

33. As the horrifying sound of the Taser rang out, Kenneth stood at the top of the steps and the Deputy walked quickly in the direction of Kenneth.

34. The deputy threw the Taser to one side and rushed at Kenneth. He put an arm bar on Kenneth, and yanked him off of the steps onto the ground, with the deputy landing on Kenneth's back.

35. The deputy then cuffed Kenneth and took him to his unit.

36. Mary Graham watched the events in disbelief and screamed and cried.

37. Deputy Rashe booked Kenneth Graham into jail and filed a criminal complaint charging him with assault upon a police officer and assault upon a household member. He also sought as a condition of bail that Kenneth Graham not have contact with Mary Graham.

38. After Kenneth Graham was incarcerated, Deputy Rashe returned to the residence on Frodo Lane and spoke with Michael Robert. He informed Michael Robert that he needed to take his statement so that they could get their stories straight.

39. Deputy Rashe asked "you saw the rock?" Michael Robert responded, "what rock?"

40. Kenneth Graham was released on bail but could not return to his residence as a condition of his bond that he not have contact with Mary.

41. Mary Graham contacted the Magistrate Court and asked if she could see Kenneth Graham and was informed that it would be a violation of his conditions of release and that such contact would lead to a revocation of bond and the re-incarceration of Kenneth Graham.

42. Although Mary Graham and Kenneth Graham had not spent one day apart from the other since the day they were married, Mary Graham was unable to spend any of the last eight days of Kenneth Graham's life with him.

43. Kenneth Graham died eight days after his release from jail in Roswell, New Mexico.

**CAUSES OF ACTION:**

**Count I**  
**ASSAULT UPON and SEIZURE OF THE PERSON**  
**WITHOUT PROBABLE CAUSE**

44. The allegations contained in paragraphs 8 through 43 are incorporated by reference as if reasserted here.



45. The assault upon and seizure of the person of Kenneth Graham was taken by Deputy Rashe without probable cause that Kenneth Graham had committed any violation of law. The seizure of his person was therefore not supported by probable cause in violation of the 4<sup>th</sup> amendment of the U.S. Constitution.

46. The assault upon and seizure of the person of Kenneth Graham was taken without probable cause that he had committed any violation of law and therefore not supported by probable cause in violation of the New Mexico Constitution and the New Mexico Tort Claims Act.

47. Defendant County of Dona Ana and Don Ana Sheriff's Office are liable for the torts of Defendant DASO Deputy Samuel Rashe pursuant to the New Mexico Tort Claims Act as respondeat superior.

**Count II**  
**ASSAULT UPON AND SEIZURE OF THE PERSON**  
**UTILIZING EXCESSIVE FORCE**

48. The allegations contained in paragraphs 8 through 43 are incorporated by reference as if reasserted here.

49. The assault upon and seizure of the person of Kenneth Graham was taken by the use of excessive force was therefore in violation of the 4<sup>th</sup> amendment to the U.S. Constitution.

50. The assault upon and seizure of the person of Kenneth Graham was taken by the use of excessive force and was therefore in violation of the New Mexico Constitution and the New Mexico Tort Claims Act.

51. Defendants County of Dona Ana and County of Dona Ana Sheriff's Office are liable for the torts of Defendant DASO Deputy Samuel Rashe pursuant to the New Mexico Tort Claims Act as respondeat superior.

**Count III**  
**MALICIOUS PROSECUTION**  
**WITHOUT PROBABLE CAUSE**

52. The allegations contained in paragraphs 8 through 43 are incorporated by reference as if reasserted here.

53. The Defendant DASO Deputy Rashe did not have probable cause to believe that Kenneth Graham had committed the crimes of assault upon a police officer or assault upon a household member.

50. The Defendant DASO Deputy Rashe intentionally and maliciously filed a criminal complaint charging Kenneth Graham with crimes that were not supported by probable cause.

51. The malicious prosecution of Kenneth Graham was in violation of the First (retaliation for exercise of free speech), Fourth (unconstitutional seizure without probable cause) and Fourteenth (taking of liberty without due process of law) Amendments of the U.S. Constitution.

52. The malicious prosecution of Kenneth Graham is also in violation of the New Mexico Constitution and the New Mexico Tort Claims Act.

53. Defendant County of Dona Ana and Dona Ana Sheriff's Office are liable for the torts of Defendant DASO Deputy Samuel Rashe pursuant to the New Mexico Tort Claims Act as respondeat superior.

**COUNT IV**  
**INFLICTION OF EMOTIONAL DISTRESS**

54. The allegations contained in paragraphs 8 through 43 are incorporated by reference as if reasserted here.

55. Mary Graham's injuries arose out of the grossly negligent or intentional actions of Defendant DASO Deputy Rashe.

56. Defendant DASO Deputy Rashe began to undertake an activity; to assist Mary Graham in dealing with Kenneth Graham, which activity was in the course and scope of his duties as a deputy sheriff.

57. Defendant DASO Deputy Rashe acted culpably, either grossly negligently or intentionally, in undertaking the activity.

58. Defendant DASO Deputy Rashe negligently inflicted emotional distress upon the Plaintiff Mary Graham.

59. As a result of the infliction of emotional distress Mary Graham suffered physical symptoms of distress, including anxiety, depression, headaches and sleeplessness.

60. The Defendants County of Dona Ana and Dona Ana Sheriff's Office are liable for the acts and torts of Defendant Rashe pursuant to the doctrine of respondeat superior.

**REQUEST FOR IMPOSITION OF PUNITIVE DAMAGES:**

61. The actions of the Defendant Samuel Rashe were malicious, willful, deliberate, oppressive, intentional, grossly negligent and reckless or done in a conscious and a reckless disregard of Plaintiffs' rights entitling the Plaintiffs to an award of punitive damages.

62. Punitive Damages are sought against Defendant Samuel Rashe pursuant to Federal Law, the New Mexico Tort Claims Act, and for the actions of Defendant DASO

Deputy Samuel Rashe taken outside the scope of his employment and in his individual capacity. Punitive Damages are not sought against the governmental defendants.

**PRAYER FOR RELIEF:**

WHEREFORE PLAINTIFF prays that the Court hold a jury trial upon the facts and issues set forth in this civil complaint; that the Court find each of the named defendants liable, and that the Court award to Plaintiff both compensatory and punitive damages in an amount to be proven at trial.

FURTHER that the Court award to Plaintiff all costs of litigation, grant an award of attorney fees, and grant such other and further relief as is deemed just and proper in the premises.

**JURY DEMAND:**

The Plaintiff hereby demands trial by a jury of six persons.

Respectfully submitted,

/s/ Jose R. Coronado  
Jose R. Coronado  
Attorney at Law  
119 N. Main Street  
Las Cruces, NM 88001  
(575) 525-2517

/s/ G. Greg Valdez  
G. Greg Valdez  
Attorney at Law  
P.O. Box 6176  
Las Cruces, NM 88006  
(575) 523-1505